Supreme Court, U.S.
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No. 00-1609

In The

Supreme Court of the United States

STATE OF TEXAS, *et al.*,

Petitioners,

v.

CHERYL J. HOPWOOD, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENTS ELLIOTT AND ROGERS IN OPPOSITION

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ARGUMENT

Respondents-plaintiffs Elliott and Rogers support in part the petition for writ of certiorari. This case was organized, filed and litigated by Steven W. Smith, counsel of record for Elliott and Rogers, principally to obtain a negative answer from the Court to the following important question of federal law: whether it is constitutional for the University of Texas School of Law to use race or national origin as a factor in its admissions process. As stated in the petition, "[t]here is consensus that the issues in this case are of national significance." Pet. 17. In addition, it is indisputable that "[t]he Court's long silence on consideration of race in higher education has left conflict and confusion in the lower courts." Pet. 16. Based on the foregoing, Elliott and Rogers request that the Court grant the petition with regard to the first question presented for review.

Pursuant to Rule 15.2, the following misstatement of fact in the petition that bears on what issues properly would be before the Court if certiorari were granted must be addressed. The defendants assert that "once they obtained *Hopwood II's* 'judicial instruction,' [the plaintiffs] opposed any attempt to implement it with a formal injunction." Pet. 25. In support of that statement, the defendants cite a brief filed on behalf of plaintiffs Hopwood and Carvell. In fact, Elliott and Rogers have always sought, and continue to seek, an injunction prohibiting the law school from using race or national origin as a factor in its admissions process. See, e.g., *Hopwood III* Reply Brief of Plaintiffs Elliott and Rogers, at 1 ("the injunction entered by the district court should be upheld

by [the court of appeals] under the law of the case doctrine").

Elliott and Rogers oppose the petition with regard to both the second question presented and the alternative relief sought by the defendants.

CONCLUSION

The petition should be granted with regard to the first question presented for review, and denied with regard to the second question presented and the alternative relief requested.

Respectfully submitted,

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